

SENATE BILL No. 592

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-14; IC 12-15; IC 29-1-8-1.

Synopsis: Medicaid matters. Requires the state to offer long term care insurance policies to state employees and requires the state to contribute \$25 per state employee per year. Requires the office of Medicaid policy and planning (office) to count the value of a household good or a personal effect that is more than \$2,000 as a countable resource in determining Medicaid eligibility. Allows the office to recover from annuity payments purchased with the assets of a Medicaid recipient or the Medicaid recipient's spouse. Eliminates a limitation on the office collecting from the estate of a surviving spouse only the amount in the deceased Medicaid recipient's probate estate. Provides that certain Medicaid providers who have been overpaid do not owe the state interest. Allows the secretary of family and social services to reduce the amount of interest due on an overpayment in certain situations. Repeals a section that limits the office's enforcement of a lien to real property in which a Medicaid recipient has an interest value of at least \$75,000.

Effective: July 1, 2005.

Miller

January 20, 2005, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 592

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-8-14 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 14. (a) The state shall offer coverage for state**
4 **employees under a long term care insurance policy as described in**
5 **section 7(a)(2) of this chapter.**

6 **(b) The state shall contribute twenty-five dollars (\$25) per year**
7 **per state employee for the coverage described in subsection (a).**

8 SECTION 2. IC 12-15-2-23 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2005]: **Sec. 23. (a) As used in this section, "household good"**
11 **means:**

12 **(1) household furniture;**

13 **(2) furnishings; or**

14 **(3) equipment;**

15 **that are commonly found in or around a house and that are used**
16 **to operate, maintain, or occupy the home.**

17 **(b) As used in this section, "personal effect" means:**



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- (1) clothing;
- (2) jewelry;
- (3) personal care items; and
- (4) individual educational and recreational items, including the following:

- (A) Books.
- (B) Musical instruments.
- (C) Hobbies.

(c) Except as provided in subsection (d), the office shall consider the value of a household good or a personal effect that has a value of more than two thousand dollars (\$2,000) as a countable resource when applying a resource standard to determine:

- (1) an applicant's; or
 - (2) a recipient's;
- eligibility for Medicaid.

(d) The office shall exclude the following from the resource standard in determining the eligibility of a Medicaid applicant or a Medicaid recipient:

- (1) One (1) wedding ring that belongs to:
 - (A) the applicant; or
 - (B) the recipient.
- (2) One (1) engagement ring that belongs to:
 - (A) the applicant; or
 - (B) the recipient.
- (3) One (1) wedding ring and one (1) engagement ring that belongs to the spouse of:
 - (A) the applicant; or
 - (B) the recipient.
- (4) A:
 - (A) prosthetic device;
 - (B) dialysis machine;
 - (C) hospital bed; or
 - (D) wheelchair;

or similar equipment that is required because of an individual's physical condition.

SECTION 3. IC 12-15-8.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) This section applies:

- (1) after the death of a Medicaid recipient whose property; or
 - (2) upon the sale of property that;
- is subject to a lien under this chapter.

(~~a~~) (b) A lien under this chapter is void if both of the following

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occur:

(1) The owner of property subject to a lien under this chapter or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the office to file an action to foreclose the lien.

(2) The office fails to file an action to foreclose the lien in the county where the property is located not later than ~~thirty (30)~~ **sixty (60)** days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

~~(b)~~ **(c)** A person who gives notice under subsection ~~(a)(1)~~ **(b)(1)** by registered or certified mail to the office at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than ~~thirty (30)~~ **sixty (60)** days have passed since the notice was received by the office.

(3) That no action for foreclosure of the lien is pending.

(4) That no unsatisfied judgment has been rendered on the lien.

~~(c)~~ **(d)** The recorder shall:

(1) record the affidavit of service in the miscellaneous record book of the recorder's office; and

(2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

SECTION 4. IC 12-15-9-0.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.5. (a) As used in this chapter, "estate" includes:

(1) all real and personal property and other assets included within an individual's probate estate;

(2) any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002; ~~and~~

(3) any real or personal property conveyed through a nonprobate transfer; ~~and~~

(4) any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is pursuant to the terms of an annuity contract purchased at any time with the assets of:

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1 **(A) a Medicaid recipient; or**

2 **(B) the Medicaid recipient's spouse.**

3 (b) As used in this chapter, "nonprobate transfer" means a valid
4 transfer, effective at death, by a transferor:

5 (1) whose last domicile was in Indiana; and

6 (2) who immediately before death had the power, acting alone, to
7 prevent transfer of the property by revocation or withdrawal and:

8 (A) use the property for the benefit of the transferor; or

9 (B) apply the property to discharge claims against the
10 transferor's probate estate.

11 The term does not include transfer of a survivorship interest in a
12 tenancy by the entireties real estate or payment of the death proceeds
13 of a life insurance policy.

14 SECTION 5. IC 12-15-9-1 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Upon the death of a
16 Medicaid recipient **or upon the death of a deceased Medicaid**
17 **recipient's spouse**, the total amount of Medicaid paid on behalf of the
18 recipient after the recipient became fifty-five (55) years of age must be
19 allowed as a preferred claim against the estate of the recipient **or the**
20 **recipient's spouse** in favor of the state. The affidavit of a person
21 designated by the secretary to administer this section is evidence of the
22 amount of the claim and is payable after the payment of the following
23 in accordance with IC 29-1-14-9:

24 (1) Funeral expenses for the recipient and the recipient's spouse,
25 not to exceed in each individual case three hundred fifty dollars
26 (\$350).

27 (2) The expenses of the last illness of the recipient and the
28 recipient's spouse that are authorized or paid by the office.

29 (3) The expenses of administering the estate, including the
30 attorney's fees approved by the court.

31 SECTION 6. IC 12-15-9-5 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. ~~(a)~~ The office may
33 not recover on a claim filed against the estate of a surviving spouse
34 while the individual is survived by a child who is:

35 (1) less than twenty-one (21) years of age; or

36 (2) permanently and totally disabled under criteria established by
37 the federal Supplemental Security Income program.

38 ~~(b) A claim against the estate of a surviving spouse for medical~~
39 ~~assistance paid on behalf of the predeceased spouse is limited to the~~
40 ~~value of the assets included in the predeceased spouse's probate estate.~~

41 SECTION 7. IC 12-15-9-7 IS ADDED TO THE INDIANA CODE
42 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2005]: **Sec. 7. A person receiving beneficiary payments from an annuity contract of a deceased Medicaid recipient is liable to the state for reimbursement of Medicaid benefits:**

- (1) paid to; or
- (2) on behalf of;

the deceased Medicaid recipient to the extent of any payments that are received by the person under the annuity contract.

SECTION 8. IC 12-15-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) If the office of the secretary believes that an overpayment to a provider has occurred, the office of the secretary may do the following:

- (1) Notify the provider in writing that the office of the secretary believes that an overpayment has occurred.
- (2) Request in the notice that the provider repay the amount of the alleged overpayment, including interest:

(A) due from the provider; and

(B) accruing from the date of overpayment.

(b) A provider who receives a notice and request for repayment under subsection (a) may elect to do one (1) of the following:

- (1) Repay the amount of the overpayment not later than sixty (60) days after receiving notice from the office of the secretary, including interest:

(A) due from the provider; and

(B) accruing from the date of overpayment.

- (2) Request a hearing and repay the amount of the alleged overpayment not later than sixty (60) days after receiving notice from the office of the secretary.

- (3) Request a hearing not later than sixty (60) days after receiving notice from the office of the secretary and not repay the alleged overpayment, except as provided in subsection (d).

(c) If:

- (1) a provider elects to proceed under subsection (b)(2); and
- (2) the office of the secretary determines after the hearing and any subsequent appeal that the provider does not owe the money that the office of the secretary believed the provider owed;

the office of the secretary shall return the amount of the alleged overpayment, and **any** interest paid **by the provider**, and pay the provider interest on the money from the date of the provider's repayment.

(d) If:

- (1) a provider elects to proceed under subsection (b)(3); and
- (2) the office of the secretary determines after the hearing and any

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subsequent appeal that the provider owes the money;
the provider shall pay the amount of the overpayment, including
interest **due from the provider and accruing** from the date of the
overpayment.

(e) Interest that is due under this section shall be paid at a rate that
is determined by the commissioner of the department of state revenue
under IC 6-8.1-10-1(c) as follows:

(1) Interest due from a provider to the state shall be paid at the
rate set by the commissioner for interest payments from the
department of state revenue to a taxpayer.

(2) Interest due from the state to a provider shall be paid at the
rate set by the commissioner for interest payments from the
department of state revenue to a taxpayer.

**(f) Interest on an overpayment to a provider is not due from the
provider if the overpayment is the result of an error of:**

(1) the office; or

(2) a contractor of the office;

as determined by the office of the secretary.

**(g) If interest on an overpayment to a provider is due from the
provider, the secretary may, in the course of negotiations with the
provider regarding an appeal filed under subsection (b), reduce the
amount of interest due from the provider.**

~~(h)~~ (h) Proceedings under this section are subject to IC 4-21.5.

SECTION 9. IC 12-15-21-3 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. The rules adopted
under section 2 of this chapter must include the following:

(1) Providing for prior review and approval of medical services.

(2) Specifying the method of determining the amount of
reimbursement for services.

(3) Establishing limitations that are consistent with medical
necessity concerning the amount, scope, and duration of the
services and supplies to be provided. The rules may contain
limitations on services that are more restrictive than allowed
under a provider's scope of practice (as defined in Indiana law).

(4) Denying payment or instructing the contractor under
IC 12-15-30 to deny payment to a provider for services provided
to an individual or claimed to be provided to an individual if the
office after investigation finds any of the following:

(A) The services claimed cannot be documented by the
provider.

(B) The claims were made for services or materials determined
by licensed medical staff of the office as not medically

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- 1 reasonable and necessary.
- 2 (C) The amount claimed for the services has been or can be
- 3 paid from other sources.
- 4 (D) The services claimed were provided to a person other than
- 5 the person in whose name the claim is made.
- 6 (E) The services claimed were provided to a person who was
- 7 not eligible for Medicaid.
- 8 (F) The claim rises out of an act or practice prohibited by law
- 9 or by rules of the secretary.
- 10 (5) Recovering payment or instructing the contractor under
- 11 IC 12-15-30-3 to recover payment from a provider for services
- 12 rendered to an individual or claimed to be rendered to an
- 13 individual if the office after investigation finds any of the
- 14 following:
- 15 (A) The services paid for cannot be documented by the
- 16 provider.
- 17 (B) The amount paid for such services has been or can be paid
- 18 from other sources.
- 19 (C) The services were provided to a person other than the
- 20 person in whose name the claim was made and paid.
- 21 (D) The services paid for were provided to a person who was
- 22 not eligible for Medicaid.
- 23 (E) The paid claim rises out of an act or practice prohibited by
- 24 law or by rules of the secretary.
- 25 (6) Recovering interest **due from a provider:**
- 26 (A) at a rate that is the percentage rounded to the nearest
- 27 whole number that equals the average investment yield on
- 28 state money for the state's previous fiscal year, excluding
- 29 pension fund investments, as published in the auditor of state's
- 30 comprehensive annual financial report; and
- 31 (B) accruing from the date of overpayment;
- 32 on amounts paid to ~~a~~ **the** provider that are in excess of the amount
- 33 subsequently determined to be due the provider as a result of an
- 34 audit, a reimbursement cost settlement, or a judicial or an
- 35 administrative proceeding.
- 36 (7) Paying interest to providers:
- 37 (A) at a rate that is the percentage rounded to the nearest
- 38 whole number that equals the average investment yield on
- 39 state money for the state's previous fiscal year, excluding
- 40 pension fund investments, as published in the auditor of state's
- 41 comprehensive annual financial report; and
- 42 (B) accruing from the date that an overpayment is erroneously

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recovered by the office until the office restores the overpayment to the provider.

(8) Establishing a system with the following conditions:

(A) Audits may be conducted by the office after service has been provided and before reimbursement for the service has been made.

(B) Reimbursement for services may be denied if an audit conducted under clause (A) concludes that reimbursement should be denied.

(C) Audits may be conducted by the office after service has been provided and after reimbursement has been made.

(D) Reimbursement for services may be recovered if an audit conducted under clause (C) concludes that the money reimbursed should be recovered.

SECTION 10. IC 12-15-23-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. An agreement under section 2 of this chapter:

(1) must include a provision for the collection of **any** interest **due from the provider** on the amount of the overpayment; and

(2) may include any other provisions agreed to by the administrator and the provider.

SECTION 11. IC 29-1-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **Except as provided in subsection (g)**, forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property, or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent.

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the claimant stating that:

(1) the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed twenty-five thousand dollars (\$25,000);

(2) forty-five (45) days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal

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representative is pending or has been granted in any jurisdiction;
and

(4) the claimant is entitled to payment or delivery of the property.

(c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subsection (b)(1) and (b)(4). The affidavit must be duly executed by the distributees of the estate.

(d) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to a claimant upon the presentation of an affidavit as provided in subsection (a).

(e) For the purposes of subsection (a), an insurance company that, by reason of the death of the decedent, becomes obligated to pay a death benefit to the estate of the decedent is considered a person indebted to the decedent.

(f) For purposes of subsection (a), property in a safe deposit box rented by a decedent from a financial institution organized or reorganized under the law of any state (as defined in IC 28-2-17-19) or the United States is considered personal property belonging to the decedent in the possession of the financial institution.

(g) If a decedent who has received medical assistance from the state under IC 12-15 has deposited personal funds with a health facility, the state may present the affidavit required under subsection (a) to the health facility if:

(1) at least fifteen (15) days have elapsed since the death of the decedent; and

(2) the state does not believe that a personal representative will be appointed for the decedent.

The affidavit must state that at least fifteen (15) days have elapsed since the death of the decedent.

SECTION 12. IC 12-15-9-0.7 IS REPEALED [EFFECTIVE JULY 1, 2005].

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